IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 568 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARANBHAI NATHABHAI BHATIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 568 of 2001

MR JV JAPEE for Petitioner No. 1

MR D.P.JOSHI, AGP for Respondent State

MR ANMOL SHARON for Respondent No. 2

MS R SRIVIDYA for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/02/2002

ORAL JUDGEMENT

The petitioner is aggrieved by the judgement and

order rendered by the Additional Sessions Judge, Sabarkantha at Himmatnagar in Criminal Revision Application No. 65 of 1999 on 12th July, 2001. The said Revision Application arose out of a judgement and order dated 31.7.1999 passed by learned Judicial Magistrate First Class, Himmatnagar, Camp Bhiloda in Criminal Misc. Application No. 43 of 1998 preferred under Section 125 Cr.P.C by the present respondent Nos. 2 and 3.

2. The facts of the case can be stated thus:

2.1 As per the case of respondent Nos. 2 and 3, respondent No.2 is the wife and respondent No.3 is the minor child of the petitioner. They were deserted and their maintenance was neglected by the petitioner and therefore, they preferred the maintenance application.

2.2 On the other hand, the case of the petitioner is that respondent No.2 is not the lawfully wedded wife of the petitioner and she is not entitled to any maintenance. It is also contended that respondent No.3 is not the child of the petitioner, not even illegitimate child and therefore neither respondent No.2, nor respondent No.3 is entitled to any maintenance.

2.3 Learned Magistrate however, accepted the case of respondent Nos. 2 and 3 and awarded maintenance in favour of respondents Nos. 2 and 3, fixing the amount of maintenance at Rs. 500/- per month to respondent No.2 and Rs. 350/- per month to respondent No.3, thus totalling to Rs.850/-. The said judgement and order was passed by the learned Magistrate on 31st July, 1999. The maintenance was awarded from the date of application.

2.4 The Revisional Court dismissed the Revision Application, confirming the order passed by the learned Judicial Magistrate First Class. Hence, the present petition.

3. Learned Advocate Mr. Janak Japee appearing for the petitioner submitted that in light of the decisions rendered by the Apex Court in Smt. Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and anr. - reported in AIR 1988 SC 644; Khemchand Om Prakash Sharma Vs. State of Gujarat and anr. - reported in 2000 (SCC (Cri.) 748 and the decision of this Court in Dahiben Vs. Ramanlal reported in 2000(2) GLR 1692, respondent No.2 is not entitled to any maintenance as both the Courts below have accepted the fact that the petitioner's marriage with Vinaben was in existence. Both the Courts below have held that though not lawfully wedded, respondent No.2 is

entitled to maintenance. Mr. Japee submitted that, therefore, the view taken by the Courts below is erroneous in light of the decisions of the Apex Court and this Court.

3.1 Mr. Japee however, did not seriously agitate the maintenance awarded to respondent No.3. He submitted that petitioner does not admit that respondent No.3 is his child, and the Courts below have therefore committed an error.

4. Petition is resisted by learned Additional Public Prosecutor Mr. D.P.Joshi for respondent No.1 State and Ms. R. Srividya for respondents Nos. 2 and 3.

4.1 Learned Advocate for the respondents Nos. 2 and 3 submitted that the finding given by the Courts below is backed by some of the judgements and therefore, it cannot be said that the view taken is erroneous. She submitted that both the Courts below have accepted that respondent No.2 is the wife and respondent No.3 is the minor child of the petitioner and accordingly maintenance is awarded. She submitted that mere inclusion of name of Vinaben in the voter's list or in the ration card will not establish that the wedlock was legal or conversely put, it would not establish that the respondent No.2 was not the legitimate wife of the petitioner and therefore, this Court may not interfere with the order.

5. Having regard to the rival side contentions and having gone through the judgements of both the Courts below, it is found that the Courts below have not clearly held that respondent No.2 - Savitaben is the lawfully wedded wife of the petitioner, on the contrary the findings are that "even if she is not lawfully wedded wife, she is entitled to maintenance." This finding cannot be upheld in light of the judgements of the Apex Court in Smt. Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and anr. - reported in AIR 1988 SC 644; Khemchand Om Prakash Sharma Vs. State of Gujarat and anr. - reported in 2000 (SCC (Cri.) 748 and the decision of this Court in Dahiben Vs. Ramanlal reported in 2000(2) GLR 1692, relied upon by Mr. Janak Japee, learned Advocate for the petitioner.

5.1 Admittedly, even according to respondent No.2 in her application, her marriage with the petitioner took place in the year 1994, whereas the evidence on record indicates that the petitioner had nominated name of Vinaben as his wife in the year 1979 in Form No.3 pertaining to Subscriber's Nomination filled-in as per

Gujarat General Provident Fund Rules, when nobody could have anticipated such an application. The result is that Vinaben was married to the petitioner much prior to 1994 and therefore, even if the case of respondent No.2 is accepted, her marriage would be subsequent and during the life time of Vinaben. The said marriage therefore would be null and void. It is nobody's case that the wedlock between petitioner and Vinaben was annuled prior to the claimed marriage of respondent No.2 with the petitioner. The Courts below have therefore, clearly erred in awarding maintenance to respondent No.2. To that extent, the order deserves to be quashed and set aside.

5.2 So far as grant of maintenance to respondent No.3 - minor Ravi is concerned, the issue is not much agitated upon. The Courts below have awarded Rs. 350/- per month by way of maintenance to the minor. Learned Advocate Mr. Japee was not in a position to prescribe a budget which would provide reasonable maintenance to the minor in an amount of Rs. 350 per month. The minor can legitimately expect two square meals in a day, reasonable clothing and education. That also could not be budgeted in the amount of Rs. 350/- per month. The order of the Court below therefore requires modification. Although this is not a petition for enhancement by minor, in peculiar facts with a view to protect interest of minor and provide a just and speedy redressal to minor and to avoid multiplicity of proceedings, the order deserves to be modified. Mr. Japee states that petitioner is a teacher. Considering her earning capacity and status, amount of Rs. 500 would be reasonable. Mr. Japee concedes to this situation.

6. The petition is partly allowed. Maintenance awarded to respondent No.2 - Savitaben is hereby quashed and set aside. The maintenance awarded to respondent No.3 - Minor Ravi is enhanced from Rs. 350/- per month to Rs. 500/- per month. The enhanced amount of maintenance shall accrue from the date of order of the learned Magistrate i.e. 31st July, 1999.

It is stated by learned Advocate Ms. Srividya for the respondents Nos. 2 and 3 that no amount of maintenance has been paid uptill now. The amount of maintenance accrued uptill now shall be paid to respondent No.3 within six weeks from the date of this order. The amount shall be deposited by the petitioner before the Court of learned Judicial Magistrate First Class, Himmatnagar, Camp Bhioda and it would be open for the respondent No.3 to withdraw that amount. The petitioner shall continue to pay maintenance at the rate of Rs. 500/- per month regularly to minor respondent

No.3. Rule made absolute to the aforesaid extent.

Direct service permitted.

(A.L.Dave, J.)
*/Mohandas